



diepenbrock harrison

A PROFESSIONAL CORPORATION

JOHN V. "JACK" DIEPENBROCK
KAREN L. DIEPENBROCK
KEITH W. HORRIG
BRADLEY J. ELKIN
EILEEN H. DIEPENBROCK
MARK D. HARRISON
GENE K. CIEVEY
LAWRENCE D. GARCIA
ANDREA A. NATARAZZO
JOEL PATRICK EAB
JON D. RUBIN
JEFFREY K. DONSO
JENNIFER L. DAUER
SEAN K. HUNGERFORD
CURIS A. MCANDLESS
DAVID A. DIEPENBROCK

JEFFREY L. ANDERSON
LEONOR Y. DICHICAN
JULIE K. REIER
DAVID P. TEMOLADOR
DAN H. SILVERBOARD
LAWSON T. KING, JR.
JONATHAN A. HART
VALERIE C. KINCAID
RACHEL A. COLES
COURTNEY R. FRIED
ANTHONY J. CORTEZ
BRADLEY D. JOHNSON

MICHAEL A. HANLEY, Of Counsel

R. JAMES DIEPENBROCK
(1929-2002)

July 1, 2009

*Via Facsimile and
Electronic Mail*

Victor J. Izzo
Senior Engineering Geologist
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, No. 200
Rancho Cordova, CA 95670

Re: Draft Cleanup and Abatement Order, Wide Awake Mine
Comments on behalf of Emma G. Trebilcot Trust

Dear Mr. Izzo:

This law firm represents Wells Fargo Bank, N.A., trustee for the Emma G. Trebilcot Trust. We appreciate this opportunity to provide comments to the regional board on the draft Cleanup and Abatement Order ("CAO") for the former Wide Awake Mine, located in Colusa County, California.

The purpose of this letter is to summarize our client's concerns regarding the proposed CAO. We anticipate providing a more detailed submittal prior to the August 13-14, 2009 hearing, when the regional board will decide whether to finalize the CAO. We have been advised by the regional board's counsel that the deadline for submitting evidence to the regional board in advance of the hearing will be stated in the public notice for the hearing, which has not yet been issued.

Our concerns fall along two lines.

First, the CAO does not contain substantial evidence to support a finding that the Trust caused or contributed to the conditions the regional board is now attempting to remediate. The Trust received the property by court order in March 1988, placed it on the market for sale almost immediately, and sold it in December 1989. The Trust did not make any improvements or take other action affecting the former mine site that might have caused a discharge, nor is there sufficient evidence that such a discharge

400 CAPITOL MALL
SUITE 1800
SACRAMENTO, CA 95814

WWW.DIEPENBROCK.COM

916 492.5000
FAX 916 446.4535

DIEPENBROCK HARRISON

Victor J. Izzo

July 1, 2009


Page 2

actually took place. The Trust, in any event, had no knowledge of possible discharges during that period.

Second, the financial effects of the CAO would fall squarely and solely upon charitable organizations with no conceivable responsibility for the site conditions. The Trust beneficiaries are Shriner's Hospitals for Crippled Children, the Salvation Army, San Francisco Lighthouse for the Blind & Visually Impaired, and Lion's Eye Foundation. For nearly 20 years, these organizations have expected that Trust assets would be available for charitable ends and budgeted accordingly. It is grossly inequitable for a state agency to now disrupt those expectations by siphoning these funds for remediation, in light of the tenuous legal grounds for liability and the complete lack of culpability on the part of the beneficiaries.

We request, therefore, that the regional board omit the Trust from the list of dischargers in the event the regional board chooses to finalize the CAO. We look forward to offering further comments, evidence and oral testimony in advance of and during the regional board's August 13-14, 2009 hearing.

Very truly yours,

DIEPENBROCK HARRISON
A Professional Corporation
By _____

Sean K. Hungerford

SKH:gjc

cc: Roberta A. Berger, Esq., WFB
Gerald A. Shupe, WFB
James E. Smith, WFB
John M. Ramseier, WFB
Patrick E. Pulupa, Staff Counsel, SWRCB